

FIRST REGULAR SESSION

SENATE BILL NO. 637

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS BRAY AND JUSTUS.

Read 1st time February 28, 2007, and ordered printed.

1386S.031

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 285, RSMo, by adding thereto thirteen new sections relating to family medical leave, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 285, RSMo, is amended by adding thereto thirteen new sections, to be known as sections 285.350, 285.352, 285.354, 285.356, 285.358, 285.360, 285.362, 285.364, 285.366, 285.368, 285.370, 285.372, and 285.375, to read as follows:

285.350. Sections 285.350 to 285.375 may be cited as the "Healthy Families, Healthy Communities Act".

285.352. As used in sections 285.350 to 285.375, the following terms shall mean:

(1) "Child", a biological, foster, or adopted child, stepchild, legal ward, or child of a person standing in loco parentis, who is under eighteen years of age or eighteen years of age or older and incapable of self-care because of a mental or physical disability;

(2) "Department", the department of labor and industrial relations;

(3) "Employer", any person, partnership, association, corporation, the state, or any political subdivision thereof that employs ten or more persons;

(4) "Employee", any person, as defined in section 290.500, RSMo, including persons employed by a retail or service business whose annual gross volume sales made on business done is less than five hundred thousand dollars, in the service of any employer;

16 (5) "Extended family member", an individual related by blood or
17 affinity whose close association with the employee is the equivalent of
18 a family relationship;

19 (6) "Grandparent", a parent of a parent;

20 (7) "Health care professional", any person licensed under state
21 law to provide health care services, including but not limited to nurses,
22 doctors, and emergency room personnel;

23 (8) "Parent", a biological, foster, or adoptive parent, stepparent,
24 legal guardian, parent-in-law, individual who stood in loco parentis
25 when a person was a child, or an individual of equivalent relationship;

26 (9) "Pro rata", the proportion of each of the benefits offered to
27 full-time employees that are offered to part-time employees that is
28 equal to the ratio of part-time hours worked to full-time hours worked;

29 (10) "Sick leave", an increment of compensated leave provided by
30 employers and small employers to an employee as a benefit of the
31 employment for use by the employee during an absence from the
32 employment for personal or family illness as described in section
33 285.356, compensated at a rate equal to the rate the employee earns
34 from his or her employment;

35 (11) "Small employer", any private individual, firm, partnership,
36 institution, corporation, or association that employs less than ten
37 persons;

38 (12) "Spouse", a person to whom the employee is legally married
39 under the laws of this state.

 285.354. 1. An employer shall provide each employee not less
2 than one hour of paid sick leave for every thirty-seven hours worked
3 by an employee. Employers will not be required under this section to
4 provide more than forty hours of sick leave for an employee in a
5 calendar year.

6 2. Small employers shall provide a minimum of one hour of paid
7 sick leave for every eighty hours worked by an employee. Small
8 employers will not be required under this section to provide more than
9 twenty-six hours of paid sick leave in a calendar year.

10 3. Paid sick leave shall accrue in hour unit increments.

11 4. Paid sick leave as provided in this section shall begin to
12 accrue at the commencement of employment.

13 5. Employees shall be entitled to use accrued paid sick leave

14 beginning on the ninetieth day following commencement of their
15 employment. After the ninetieth day of employment, employees may
16 use sick leave as it is accrued.

17 6. There shall be a limit of forty hours on the amount of paid sick
18 leave an employee may carry forward from one calendar year to the
19 next.

20 7. For periods of sick leave that are shorter than a normal
21 workday, that leave shall be counted on an hourly basis or in the
22 smallest increment that the employer's payroll system uses to account
23 for absences or use of other leave.

24 8. All employers covered under sections 285.350 to 285.375, at the
25 discretion of the employer, may loan the sick leave to the employee in
26 advance of accrual by such employee.

27 9. Any employer with a paid leave policy who makes available an
28 amount of paid leave that may be used for the same purposes and under
29 the same conditions as paid sick leave under sections 285.350 to 285.375
30 shall be deemed to be in compliance with sections 285.350 to 285.375.

31 10. Nothing in sections 285.350 to 285.375 shall be construed to
32 prevent employers from adopting or retaining leave policies that are
33 more generous than the policies required under sections 285.350 to
34 285.375.

35 11. Nothing in sections 285.350 to 285.375 shall be construed as
36 requiring financial or other reimbursement to an employee from an
37 employer upon the employee's termination, resignation, retirement, or
38 other separation from employment for accrued paid sick leave that has
39 not been used.

285.356. 1. Sick leave accrued under sections 285.350 to 285.375
2 may be used by an employee for any of the following:

3 (1) An absence resulting from a physical or mental illness, injury,
4 or medical condition of the employee;

5 (2) An absence resulting from obtaining professional medical
6 diagnosis or care, or preventive medical care, for the employee;

7 (3) An absence for the purpose of caring for a child, parent,
8 grandparent, spouse, or any extended family member who has any of
9 the conditions or needs for diagnosis or care described in subdivisions
10 (1) and (2) of this subsection.

11 2. An employee shall make a reasonable effort to schedule leave

12 in a manner that does not unduly disrupt the operations of the
13 employer.

14 3. Paid sick leave shall be provided upon the oral or written
15 request of an employee. Such request shall:

16 (1) Include a reason for the absence involved and the expected
17 duration of the leave;

18 (2) Provide notice of the leave. Where the need for the leave is
19 foreseeable, an employer may require advance notice of the intention
20 to take such leave as soon as the employee is aware of the need for the
21 leave. Where the need is not foreseeable, an employer may require an
22 employee to give notice of the need for leave as soon as practicable.

285.358. 1. An employer may require that a request for leave be
2 supported by certification issued by the health care professional of the
3 eligible employee or of an individual described in subdivision (3) of
4 subsection 1 of section 285.356, as appropriate, if the leave period
5 covers more than three consecutive workdays.

6 2. The employee shall provide a copy of such certification to the
7 employer in a timely manner, not later than thirty days after the first
8 day of the leave. The employer shall not delay the commencement of
9 the leave on the basis that the employer has not yet received the
10 certification.

285.360. 1. If an employer possesses health information about an
2 employee or an employee's child, parent, spouse, or extended family
3 member, such information shall:

4 (1) Be maintained on a separate form and in a separate file from
5 other personnel information;

6 (2) Be treated as a confidential medical record; and

7 (3) Not be disclosed except to the affected employee or with the
8 permission of the affected employee.

285.362. An employer with a leave policy providing paid leave
2 options shall not be required to modify such policy if such policy offers
3 an employee the option, at the employee's discretion, to take paid sick
4 leave that is at least equivalently beneficial to the employee as the sick
5 leave described in sections 285.350 to 285.375.

285.364. 1. Each employer shall at all times retain a posted
2 notice setting forth excerpts from, or summaries of, the pertinent
3 provisions of sections 285.350 to 285.375, including:

4 **(1) Information describing leave available to employees under**
5 **sections 285.350 to 285.375;**

6 **(2) Information pertaining to the filing of an action under**
7 **sections 285.350 to 285.375;**

8 **(3) The details of the notice requirement for foreseeable leave;**
9 **and**

10 **(4) Information that describes the protections that an employee**
11 **has in exercising rights under sections 285.350 to 285.375, and how the**
12 **employee can contact the department if any of their rights are violated.**

13 **2. The notice described under subsection 1 of this section shall**
14 **be posted:**

15 **(1) In conspicuous places on the premises of the employer where**
16 **notices to employees are customarily posted; or**

17 **(2) In employee handbooks.**

18 **3. Any employer who willfully violates the posting requirements**
19 **of this section shall be subject to a civil fine in an amount not to exceed**
20 **one hundred dollars for each separate offense.**

285.366. 1. It shall be unlawful for any employer to interfere
2 **with, restrain, or deny the exercise of, or the attempt to exercise, any**
3 **right provided under sections 285.350 to 285.375.**

4 **2. It shall be unlawful for any employer to:**

5 **(1) Use the taking of sick leave under sections 285.350 to 285.375**
6 **as a negative factor in an employment action, such as firing, promotion,**
7 **or a disciplinary action; or**

8 **(2) Count the sick leave under a no-fault attendance policy.**

9 **3. It shall be unlawful for any person to discharge or in any**
10 **other manner discriminate against or retaliate against any individual**
11 **because such individual:**

12 **(1) Exercised or attempted to exercise any right provided under**
13 **sections 285.350 to 285.375;**

14 **(2) Has filed an action, or has instituted or caused to be**
15 **instituted any proceeding related to sections 285.350 to 285.375;**

16 **(3) Has given, or is about to give, any information in connection**
17 **with any inquiry or proceeding relating to any right provided under**
18 **sections 285.350 to 285.375;**

19 **(4) Has testified, or is about to testify, in any inquiry or**
20 **proceeding relating to any right provided under sections 285.350 to**

21 285.375.

285.368. 1. The employee or the attorney general may enforce the
2 provisions of sections 285.350 to 285.375 by bringing a civil action
3 against an employer to enforce the provisions of sections 285.350 to
4 285.375. The attorney general may conduct an investigation to obtain
5 voluntary conciliation of an alleged violation. Such an investigation
6 shall not be a prerequisite to bringing an action in court.

7 2. Any employer who violates sections 285.350 to 285.375 shall be
8 liable to any employee affected for damages equal to:

9 (1) The amount of any wages, salary, employment benefits, or
10 other compensation denied or lost to such employee by reason of the
11 violation; or

12 (2) In a case in which wages, salary, employment benefits, or
13 other compensation have not been denied or lost to the employee, any
14 actual monetary losses sustained by the employee as a direct result of
15 the violation up to a sum equal to ten days of wages or salary for the
16 employee;

17 (3) The interest on the amount described in subdivision (1) of
18 this subsection calculated at the average prime rate charged by banks
19 in the calendar year rounded to the nearest full percent;

20 (4) An additional amount as liquidated damages; and

21 (5) Equitable relief as may be appropriate, including
22 employment, reinstatement, and promotion.

285.370. Nothing in sections 285.350 to 285.375 shall be construed
2 to discourage an employer from the adoption or retention of a paid
3 leave policy more generous to the employee than the one required by
4 sections 285.350 to 285.375.

285.372. 1. The department shall develop and maintain a
2 program of education concerning the rights and benefits of sections
3 285.350 to 285.375.

4 2. The department shall provide to each employer a notice
5 informing workers of their sick day rights and benefits under sections
6 285.350 to 285.375. The notice shall be given by every employer to each
7 employee.

285.375. Nothing in sections 285.350 to 285.375 shall be construed
2 to modify, eliminate, or otherwise abrogate any existing family leave
3 policies, employment benefits, or protections that employees may have

4 pursuant to any employment contracts or collective bargaining
5 agreements, to the extent that the contracts and agreements provide
6 greater protections than those afforded under sections 285.350 to
7 285.375.

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